IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSEPH P. FERET, JAMES CLOUD, IRINA LEYDERMAN, on Behalf of Themselves and All Similarly Situated Persons, Plaintiffs,	:	CIVIL ACTION
v.	:	
FIRST UNION CORP., as successor-in-interest to CORESTATES FINANCIAL CORP., CORESTATES FINANCIAL CORP., Its Employee Pension and Welfare Benefit Plans, and the Fiduciaries and Administrators of Each, Defendants.	:	No. 97-6759

MEMORANDUM AND ORDER

YOHN, J. January , 1999

Joseph P. Feret, James Cloud, and Irina Leyderman have brought this class action against CoreStates Financial Corporation,[1] its employee pension and welfare benefit plans, and the fiduciaries and administrators of each plan (collectively "CoreStates"). In their amended complaint, plaintiffs seek relief for interference with their attainment of benefits in violation of § 510 of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1140 (Count I); breach of fiduciary duty in violation of §§ 404, 405, and 502(a)(3) of ERISA, 29 U.S.C. §§ 1104,

[1] Subsequent to the initiation of this suit, First Union Corporation acquired defendant CoreStates Financial Corporation. For reasons of consistency and simplicity, the court will refer to the defendant as CoreStates.

1105, and 1132(a)(3) (Count II); failure to provide benefits in violation of § 502(a)(1)(B) of ERISA, 29 U.S.C. § 1132(a)(1)(B) (Count III); denial of benefits in violation of the Pennsylvania Wage Payment and Collection Law ("WPCL"), 43 PA. CONS. STAT. § 260.1, et seq. (1992 & Supp. 1997) (Count IV); breach of contract (Count V); equitable estoppel (Count VI);[2] violations of § 10(b) of the Exchange Act and Rule 10b-5 (Count VII); violations of § 1-401 and § 1-501(a) of the Pennsylvania Securities Act, 70 P.S. §§ 1-401, 1-501(a) (Count VIII); fraud (Count IX); and negligent misrepresentation (Count X).

Pending before the court are defendants' motion for summary judgment on Counts I, II, III, IV, V, VII, VIII, IX, and X, and plaintiffs' cross-motion for summary judgment on Counts II and III of plaintiffs' amended complaint. For the reasons stated below, the court has granted defendants' motion for summary judgment as to plaintiffs in Subclass A on all counts. With respect to Subclass B, the court has granted defendants' motion for summary judgment on counts V, VII, VIII, IX, and X, and denied defendants' motion on Counts I, II, III, and IV. The court also has denied plaintiffs' motion for summary judgment on counts II and III.

I. Factual Background

Because the basic facts of the case have not changed since the granting of plaintiffs' motion for class certification, with minor alterations, the facts as described in the court's earlier decision are adopted and reiterated below.

In March 1997, CoreStates announced to its employees that it was broadening its

[2] Count VI, plaintiffs' claim for equitable estoppel, was dismissed in response to defendants' Rule 12(b)(6) motion. See Feret v. CoreStates Fin. Corp., No. 97-6759, 1998 WL 426560, at *10 (E.D. Pa. July 27, 1998).

relationship with Andersen Consulting ("Andersen") into a long-term contract whereby Andersen would manage CoreStates' Systems and Technology Group functions. See Amended Complaint ¶ 1.[] In a written communication, Terrence A. Larsen (then Chairman of the Board and Chief Executive Officer of CoreStates) and Rosemary B. Greco (then President of CoreStates) assured employees that "[t]his means that people whose jobs are affected will receive benefits according to the CoreStates severance policy." Plaintiffs' Memorandum in Support of Plaintiffs' Motion for Class Certification of Counts I Through VI of the Complaint ("Pls' Mem."), Exhibit A at 2.

In response to employee inquiries about the applicable severance pay document, Debra Ricci of the CoreStates Human Resources Department informed class members that the applicable document was on-line. On April 25, 1997, she informed class members via the company-wide e-mail system ("TOSS") that "[t]he policy that is online (the HR Policy Manual on TOSS) is correct and in place (has been since 9/96) . . . . [T]he severance policy in place (the one online) is up to date." Pls' Mem., Exhibit C at 1.

The on-line policy provided "[b]enefits to employees whose employment [was] involuntarily terminated for reasons other than for Cause and who execute[d] a release and waiver of claims in favor of CoreStates." Pls' Mem., Exhibit H, § 1.01. The policy defined "involuntary termination" as "a termination initiated entirely by CoreStates for reasons other than for Cause." Id. § 2.10.

On May 1, 1997, CoreStates issued a press release announcing that it had reached an agreement in principle to establish a ten-year information technology alliance with Andersen. See Pls' Mem., Exhibit B at 1. The press release stated that all CoreStates employees in the technology operations division would either be offered positions with Andersen or be retained by CoreStates. See id. at 1-2. The release also stated that Andersen would manage 40% of CoreStates' technology operations, but that CoreStates would "retain control over its technology strategy, direction, priorities and decision making . . . ." Id. at 1.

On May 20, 1997, Ricci informed employees via another company-wide e-mail, "I have not received any directives to change anything in the severance policy that is online, so that is the policy as it stands right now." Pls' Mem., Exhibit E at 1. In response to further requests for the current severance plan, she wrote on June 2, 1997 that "[t]he current severance plan is what you see online--the severance pay policy." Pls' Mem., Exhibit F at 2.

Plaintiffs allege that, in the spring of 1997--at the same time that Ricci was representing to employees that the current severance policy was on-line--CoreStates amended the policy and made it effective retroactively to September of 1996. See Amended Complaint ¶ 42. The amended policy redefines the term "Involuntary Termination":

> Section 2.11. "Involuntary Termination" shall mean a termination initiated entirely by CoreStates for reasons other than: (I) for Cause; (ii) for Performance Reasons; (iii) by reason of death or a physical or mental condition causing the Employee to be unable to substantially perform his or her duties . . . ; and (iv) by reason of the expiration of an approved leave

> of absence. An "Involuntary Termination" shall include (I) the rejection of a new position offered to an Employee by CoreStates that is not a Comparable Position and (ii) the lack of a Comparable Position when an Employee returns from a leave of absence approved by CoreStates at the time the Employee commenced the leave.

Exhibit H to Pls' Mem., at 3. The policy also includes a new section that defines the term "Comparable Position."[3] Plaintiffs allege that they were not given any notice that the plan was being retroactively amended. See id. ¶ 44.

Some time between March 1997--when CoreStates initially announced to its employees that it was broadening its relationship with Andersen into a long-term contract--and August 26, 1997, CoreStates notified some employees in the ADM portion of its Information and Technology Group that they were going to be terminated and transferred pursuant to the CoreStates-Andersen alliance. The record does not indicate precisely when this notification occurred.

On August 26, 1997, Andersen extended offers of employment to individuals who were scheduled to be terminated and transferred pursuant to the alliance. The offers were contingent upon the signing of the contract creating the alliance between CoreStates and Andersen. See id. ¶ 32; Complaint, Exhibit C at 1. In September, the two companies entered into the contract and on November 1, 1997, Andersen assumed responsibility for certain CoreStates' technology and operations functions. See Amended Complaint, Prelim. St., at 2. Also on November 1, approximately 170 employees of CoreStates' Systems and Technology Group were terminated and transferred to the payroll of Andersen. See Report on Status of Waiver Requests and Supplemental Memorandum Opposing Class Certification ("Report") at 1; Plaintiffs' Supplemental Memorandum in Support of Motion for Class Certification ("Pls' Supp. Mem.) at 2-3. Plaintiffs allege that these employees had no break in service. That is, they left work on October 31, 1997 as employees of CoreStates and returned as nominal Andersen employees the next business

---

[3] This section provides:

> Section 2.06. "Comparable Position" shall mean an offer of another job at CoreStates (or a job at another entity which acquires a unit of, or business from, CoreStates or outsources a function of CoreStates, and hires some or all of the employees of such unit, business or function) which, in either situation, meets all of the following conditions, to the extent applicable: (I) for a non-exempt Employee, is located not more than 20 miles from the Employee's present job and, for an exempt Employee, is located not more than 40 miles from the Employee's present job . . . , (ii) has a comparable compensation level, as determined in accordance with CoreStates' then Severance Pay Policy, (iii) does not involve a change from part-time to full-time or vice versa, or from "hourly without benefits" (less than 20 hours per week) to "hourly with benefits" (20 to 29 hours per week) or vice versa, and (iv) does not involve a shift change.

Pls' Mem., Exhibit H at 2 (emphasis added).

day, November 3, 1997. See Amended Complaint ¶¶ 1, 4, 7, 10, 35. They allege that, as Andersen employees, they continue to do the same work that they did as CoreStates employees. See id. ¶¶ 30, 35. However, plaintiffs allege, they have not received any of the benefits that they received while they were CoreStates employees. See id. ¶ 36.

Plaintiffs contend that an additional 40 to 55 employees in the ADM portion of CoreStates' Information Technology Group were notified that they would be terminated and transferred to Andersen pursuant to the alliance, but left CoreStates before they could be so terminated and transferred. See Pls' Supp. Mem. at 2; Pls' Supp. Mem., Exhibit A (Feret Aff.) ¶ 3. According to plaintiffs, these 40 to 55 individuals left CoreStates some time between May 7, 1997 and November 1, 1997. See id. From defendants' submissions, however, it appears that, as of May 7, 1997, CoreStates had not yet decided exactly which employees were going to be terminated and transferred. See Letter to Judge Yohn from Michael H. Rosenthal, July 24, 1998 ("Defs' Letter'), Exhibit A (CoreStates Andersen Alliance Questions and Answers #2, May 7, 1997) ¶ 1A ("CoreStates has received a commitment from Andersen that employees who are selected to work for Andersen will receive comparable job offers." (emphasis added)). Thus, a smaller number of individuals fall into this category of employees in the ADM portion of CoreStates' Information and Technology Group who were notified that they would be terminated and transferred to Andersen, but who left CoreStates before they could be so terminated and transferred.[4]

Plaintiffs filed this action on November 3, 1997. Approximately two weeks later, on November 18, CoreStates announced that it had entered into a merger agreement with First Union Corporation. See Memorandum of Law in Opposition to Motion for Class Certification ("Defs' Mem.") at 10. In light of the merger, CoreStates decided to terminate its agreement with Andersen. See id.

On February 24, 1998, plaintiffs filed [their] motion for class certification. Approximately one month later, on March 20, 1998, CoreStates offered to rehire all of its former employees who were still employed with Andersen. See Defs' Mem. at 1, 10. Of the 170 employees who were terminated and transferred to Andersen on November 1,

---

[4] According to defendants, CoreStates employed in its Information and Technology Group an additional 66 individuals who were not terminated and transferred pursuant to the alliance:

> There were approximately 236 individuals in the CoreStates' Information and Technology Group ("IT") Group as of October 31, 1997. . . . Only 170 individuals, however, became employees of Andersen on November 1, 1997. The remainder stayed with CoreStates.

See Defs' Report at 1 (emphasis added). At oral argument, plaintiffs agreed that they were not seeking to certify these individuals as part of the class.

1997, 143 were still employed with Andersen on March 20, 1998. See Report at 1.[5] One hundred and thirty-seven (137) of these employees--including plaintiffs Feret and Leyderman--accepted CoreStates' offer of reemployment. See id.

CoreStates also offered to give each of its former employees who had remained with Andersen a lump-sum payment of $7,500 in return for a waiver of any claims that he or she might have against CoreStates. See Defs' Mem. at 2-3. CoreStates gave these individuals 45 days in which to decide whether to accept this settlement offer. Plaintiffs, however, raised objections to the language used in the notices and waivers sent to these employees before the end of the 45 day period. After discussion between the parties, CoreStates sent out revised notices and waivers, and set a new deadline of June 29, 1998. See id. at 2 n.1. One hundred and nineteen (119) employees--including plaintiff Leyderman--settled their claims with CoreStates by signing these waivers. See Report at 2. Of the 170 employees who were terminated and transferred to Andersen on November 1, 1997, a total of 51--including plaintiffs Feret and Cloud--did not sign waivers releasing their claims against CoreStates.[6]

Feret v. CoreStates Fin. Corp., No. 97-6759, 1998 WL 512933, at *1-*5 (E.D. Pa. Aug. 18, 1998).

On August 18, 1998, the court granted plaintiffs' motion for class certification. Id. at *14. The class includes "all employees in the Application Development and Maintenance ("ADM") portion of the Information Technology Group of CoreStates who were notified that they would be terminated by CoreStates as a result of the alliance between CoreStates and Andersen Consulting, including individuals who left CoreStates before they could actually be terminated and transferred to Andersen as well as individuals who nominally became Andersen

---

[5] Twenty-seven (27) employees--including plaintiff Cloud--resigned from Andersen at some point between November 1, 1997 and March 20, 1998, and thus did not receive offers of reemployment. See Report at 1; Pls' Supp. Mem. at 2.

[6] These 51 individuals fall into three categories: Twenty-seven (27) individuals--including plaintiff Cloud--resigned from Andersen at some point between November 1, 1997 and March 20, 1998, and thus never received a settlement offer from CoreStates. Eighteen (18) individuals--including plaintiff Feret--accepted CoreStates' reemployment offer, but rejected its settlement offer. Six (6) individuals rejected both CoreStates' reemployment offer and settlement offer. See Pls' Supp. Mem. at 2.

employees on November 1, 1997, but excluding individuals who were notified before October 31, 1997 that they would be retained by CoreStates." Id. The class was subdivided into two subclasses. Id. Subclass A consists of "all individuals who have signed waivers releasing their claims against CoreStates." Id. Subclass B consists of "all individuals who have not signed waivers releasing their claims against CoreStates." Id. Joseph Feret, James Cloud, and Irina Leyderman were appointed class representatives with Leyderman representing Subclass A and Feret and Cloud representing Subclass B. Id.

II. SUMMARY JUDGMENT STANDARD

Summary judgment is to be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56 (c). The court should not resolve disputed factual issues, but rather, should determine whether there are factual issues which require a trial. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). If no factual issues exist and the only issues before the court are legal, then summary judgment is appropriate. See Sempier v. Johnson & Higgins, 45 F.3d 724, 727 (3d Cir.), cert. denied, 515 U.S. 1159 (1995). If, after giving the nonmoving party the "benefit of all reasonable inferences," id. at 727, the record taken as a whole "could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial,'" Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986), and the motion for summary judgment should be granted.

III. DISCUSSION

A. Subclass A - Enforceability of the Release

Defendants are seeking to enforce the waiver of claims against the 119 plaintiffs in Subclass A who signed the release following the May 7, 1998, revised notice.[7] To be a valid

---

[7] The release contained the following language:

> 1. In consideration for the decision of CoreStates Financial Corp to provide me with a lump sum benefit of $7500, minus withholding taxes, as a reemployment benefit, I hereby **REMISE, RELEASE, AND FOREVER DISCHARGE** CoreStates Financial Corp ("CoreStates"), First Union Corporation, together with its and their subsidiaries and affiliates, and its and their officers, directors, employees, agents, predecessors, shareholders, partners, successors, assigns, heirs, executors and administrators (hereinafter referred to collectively as "**RELEASEES**"), of claims and from any and all manner of actions and causes of actions, suits, debts, claims and demands whatsoever in law or in equity, which I ever had, now have, or hereafter may have, or which my heirs, executors or administrators hereafter may have, by reason of any matter, cause, or thing whatsoever occurring at any time in the past up through the execution date of this Release and Waiver of Claims, and particularly, but without limitation of the foregoing general terms, any claims concerning or relating in any way to my former employment relationship with CoreStates, the termination of my employment relationship with CoreStates in November, 1997, or my employment relationship with Andersen Consulting, LLP, including but not limited to, any claims which have been asserted, could have been asserted, or could be asserted now or in the future against the **RELEASEES**, including any claims arising under . . . the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 301 et seq., as amended ("ERISA") . . . and any and all other federal, state, or local laws, and any common law claims now or hereafter recognized, as well as all claims for counsel fees and costs.
>
> 2. I further agree and covenant that neither I, nor any person, organization, or other entity on my behalf, will file, charge, claim, sue, or cause or permit to be filed, charged, or claimed, any civil action, suit, or legal proceeding seeking any type of personal relief, or share in any remedy against any of the **RELEASEES**, involving any matter occurring at any time in the past up to and including the date of this Release and Waiver of Claims, or involving any continuing effects of any actions or practices which may have arisen or occurred on or prior to the dates of this Release and Waiver of Claim, including any charge of discrimination or complaint under . . . ERISA . . . and any and all other federal, state, or local laws, and any common law claims now or hereafter

waiver of rights and claims, a party must knowingly and voluntarily sign the release. See, e.g., Long v. Sears Roebuck & Co., 105 F.3d 1529, 1538-39 (3d Cir. 1997) (discussing requirements necessary to establish existence of knowing and voluntary release under ADEA), cert. denied, 118 S. Ct. 1033 (1998); Rodriguez-Abreu v. Chase Manhattan Bank, 986 F.2d 580, 587 (1st Cir. 1993) ("ERISA does not prohibit knowing and voluntary relinquishment of employee benefits"); Bennett v. Independence Blue Cross, No. 9204249, 1993 WL 15603 (E.D. Pa. Jan. 13, 1993) ("To be effective, the waiver must be knowing and voluntary"). The individual contesting the enforceability of a release has the burden of proving it to be invalid.[8] See Wicker v. Consolidated Rail Corp., 142 F.3d 690, 696 (3d Cir.) ("[T]he party attacking the validity of the release bears the burden of proof as to its invalidity."), cert. denied, 119 S. CT.. 530 (1998).

To determine whether a release serves as a knowing voluntary waiver, courts use the totality of circumstances test which incorporates the following factors: "(1) The clarity and

---

recognized, as well as all claims for counsel fees and costs.

Exhibits in Supp. of Def.'s Mot. for Summ. J., Exhibit 24, Release and Waiver of claims signed by Irina Leyderman.

[8] The moving party has the burden to establish that the opposing party "signed the release, received due consideration, and then breached the release." Uherek v. Houston Light & Power Co., 997 F. Supp. 789, 792 (S.D. Tex. 1998). The party contesting validity "bears the burden of demonstrating that the release was invalid because of fraud, duress, material mistake, or some other defense." Id. As the moving party, defendant has met its initial burden. Neither party disputes that the Irina Leyderman, the representative of Subclass A, and 118 other class members signed the release. See Parties Joint Agreed-Upon Proposed Findings of Fact and Conclusions of Law, at 13 ¶ 80. Furthermore, the parties do not contest the fact that the individuals who signed the release received $7,500 in exchange for doing so. See Id. Finally, as stated in a previous decision by this court, the parties agree that, if valid, this release waives the signers' claims in this case, see Feret v. CoreStates Fin. Corp., No. 9706759, 1998 WL 512933 at *6 n.10 (E.D. Pa. Aug. 18, 1998) (granting class certification), and therefore, any pursuit of their claims in this case would breach the terms of the release. See Pls.'Exhibit 46.

specificity of the release language; (2) The plaintiff's education and business experience; (3) The amount of time plaintiff had for deliberation before signing the release; (4) Whether plaintiff knew or should have known his rights upon execution of the release; (5) Whether plaintiff was encouraged to seek, or in fact received, the benefit of counsel; (6) Whether there was an opportunity for negotiation of the terms of the agreement; and (7) Whether the consideration given in exchange for the waiver and accepted by the employee exceeds the benefits to which the employee was already entitled by contact [sic] or law." Bennett, 1993 WL 15603, at *2 (citing Cirillo v. ARCO Chem. Co., 862 F.2d 448, 451 (3d Cir. 1988) (superseded by statute as applies to ADEA cases). No single factor is dispositive. Smart v. Gillette Co. Long-Term Disability Plan, 70 F.3d 173, 182 (1st Cir. 1995).

Plaintiffs only contest the release on two bases. They first claim that the waiver was not knowing and voluntary because plaintiffs did not receive consideration. The class argues that because "retained" and "detained" ADM employees also received $7,500 in exchange for signing releases, the money that plaintiffs received does not constitute consideration for waiver of their claims in this case.[9] This argument fails to persuade the court that the members of Subclass A did not sign a valid release.

The crux of plaintiffs' argument is that "CoreStates provided plaintiffs and the class nothing of value that exceeded benefits plaintiffs would have been entitled to regardless of whether they were transferred to Andersen (if they were ADM employees and willing to sign a

[9] "Retained" employees are those members of the ADM group who "at the time offers were made by Andersen and CoreStates, were made an offer by CoreStates." Deposition of Laurie Cowan ("Cowan Dep."), at 86. "Detained" employees refers to individuals "who were made an offer by Andersen," but because of contract-related issues, never went to work for Andersen and remained CoreStates employees. Id. at 87.

release)." Plaintiffs' Resp. to Def.'s Motion for Summ. J. ("Pls.' Resp.") at 5. Consequently, plaintiffs claim, the release is invalid for lack of consideration. Id. at 7.

The Supreme Court has described consideration as follows: "'In order that there may be consideration, there must be mutual concessions. A release is not supported by sufficient consideration unless something of value is received to which the creditor had no previous right.'" Maynard v. Durham & Southern Ry Co., 365 U.S. 160, 163 (1961). Although they each received $7,500 in exchange for signing the release, plaintiffs claim this money does not constitute consideration because CoreStates provided the detained and retained employees the same opportunity to sign a release in exchange for the same amount of money. Pls.' Resp., at 6. Thus, plaintiffs contend, "it is clear that the $7,500 payment was not consideration for release of class claims against CoreStates, but rather compensation which defendants recognized all CoreStates employees in the ADM function were owed and entitled to as a matter of law. Id. (emphasis in original).

Plaintiffs make a significant leap of logic that is unsubstantiated by the case law or the facts of this case. It offends common sense to state that because other employees also waived their rights in exchange for money, nobody waived their rights, and that CoreStates simply owed every ADM employee $7,500. Plaintiffs submit no evidence that any of the ADM group members, plaintiffs or otherwise, were legally entitled to receive $7,500 from CoreStates prior to the signing of the release. Furthermore, to contend that the retained and detained employees did not give up any rights simply because they were not involved in the instant litigation presumes

that these employees had no independent right to bring suit against CoreStates.[10] Consideration in return for a party's promise not to sue is as valid as settling filed claims. See Killian v. McCulloch, 873 F. Supp. 938, 943 (E.D. Pa. 1995) (upholding release in which plaintiff promised not to sue in exchange for lump sum payment), aff'd sub nom. Stadler v. McCulloch, 82 F.3d 406 (3d Cir. 1996). Plaintiffs were given a sum of money to which they were not legally entitled in exchange for releases. This is the very essence of consideration and the fact that others may also have been given money they were not legally entitled to in exchange for a release of their separate claims is totally irrelevant.

Plaintiffs' second argument is that even if consideration exists, the waiver is invalid because plaintiffs were induced to sign by fraud. This argument is equally unpersuasive. Plaintiffs contend that CoreStates made material misrepresentations to them regarding the eligibility of the retained and detained employees to enter into a waiver agreement which renders the release unenforceable. Pls.' Resp., at 7. In its offer of reemployment to the employees at Andersen, on March 19, 1998, CoreStates stated that the ADM employees who had remained at CoreStates were not eligible for the $7,500 benefit. Plaintiffs' Supplemental Appendix ("Pls.' Appendix B"), Exhibit 46, Letter from Linda Kramer to Irina Leyderman, Mar. 19, 1998. This was true at that time. On April 22, 1998, after plaintiffs objected to this settlement effort by CoreStates, this court ordered defendants to issue a revised notice to the employees that contained "fair, accurate and complete information" and that would remedy any misleading

[10] The evidence in the record demonstrates that when the detained and retained employees heard of the offer being made to plaintiffs and began questioning management about their rights, CoreStates made a decision to seek waivers from these employees in addition to the employees who had been transferred to Andersen. Cowan Dep., at 93-96.

information contained in the original notice. See Pls.' Appendix B, April 22, 1998, Court Order. CoreStates issued a revised notice on May 7, 1998. See id., Exhibit 49, Notice to Former Andersen Employees from Sue Perrotty. This notice did not contain any information regarding the decision of CoreStates in the interim to offer retained and detained employees $7,500 in exchange for releases. See id. Plaintiffs argue that this omission is both a violation of the court order and a material misrepresentation. Consequently, they claim the release should carry no legal force.

Defendants counter that they did inform the plaintiffs in an e-mail notification, that both transferred employees and detained and retained employees attended a meeting regarding the release, and that any misrepresentation that may have occurred was not material. See Defendants' Reply Mem. in Supp. of their Mot. for Summ. J ("Defs.' Reply"), at 2-3.

Even if the court accepts plaintiffs' contentions that the omission made by defendants amounts to a misrepresentation,[11] the waiver remains enforceable. The terms of the release offered to the plaintiffs are clear and specific, and plaintiffs had ample opportunity to evaluate the claims involved in this litigation (the existence of which they were duly notified) and determine for themselves the propriety of signing away their potential claims in exchange for the

[11] Plaintiffs have presented evidence that defendants misrepresented the fact that retained and detained employees were not eligible for the waiver benefit. For example, it is not clear from the record that CoreStates actually notified plaintiffs that others would be eligible to sign the release. See Cowan Dep. at 93-96 (stating that she was not sure whether this decision was communicated to the employees via e-mail). Additionally, the mere fact that detained and retained employees might have been present at a meeting with plaintiffs, without more, arguably would not serve to rectify an affirmative misrepresentation. Thus, by failing to disclose the extent to which releases were being signed, plaintiffs may well have been led to believe that they were receiving something that others not involved in the litigation were not. As discussed below, however, this misrepresentation is immaterial to the validity of the releases.

$7,500 offered by CoreStates. See Pls.'Appendix B, Exhibit 49 (providing plaintiffs forty-five days to sign release and seven days to revoke the waiver once they signed it). Furthermore, plaintiffs were encouraged to, and some did, seek the advice of counsel. See id. (recommending that employees seek the advice of counsel before signing release); Deposition of Irina Leyderman ("Leyderman Dep."), at 160 (stating that, prior to signing the release, she discussed the release with her counsel for at least one hour).

Because plaintiffs were privy to the information necessary to evaluate the merits of the claims in the present lawsuit, and because the terms of the release were clear and understandable, and because plaintiffs have failed to produce evidence demonstrating in what way their lack of knowledge as to non-class members signing releases did or could have influenced the decisionmaking of the plaintiffs, the court finds that any alleged misrepresentation made to the plaintiffs in connection with the notice was not material. Consequently, plaintiffs have failed to meet their burden of "unequivocally" proving the invalidity of the release. See Killian, 873 F. Supp. at 943 ("The language of the release demonstrates the intention of the parties and will govern unless the party attempting to avoid the release unequivocally proves its invalidity."). Therefore, all claims on behalf of the plaintiffs in Subclass A have been dismissed. The court will evaluate each of the claims below only with regard to plaintiffs in Subclass B.

B. Count I

In Count I, plaintiffs contend that CoreStates created the Andersen Alliance and terminated the plaintiffs to prevent them from attaining benefits in violation of § 510 of ERISA,

29 U.S.C. § 1140, ("§ 510").[12] Defendants maintain that plaintiffs have not demonstrated that CoreStates had the specific intent to violate ERISA which is necessary to prevail on a § 510 claim.

To establish a prima facie case under § 510, "plaintiffs must demonstrate: (1) prohibited employer conduct (2) taken for the purpose of interfering (3) with the attainment of any right to which the employee may become entitled." Gavalik v. Continental Can Co., 812 F.2d 834, 852 (3d Cir. 1987), cert. denied, 484 U.S. 979 (1987). Plaintiffs "must show that the employer made a conscious decision to interfere with the employee's attainment of pension eligibility or additional benefits." Dewitt v. Penn-Del Directory Corp., 106 F.3d 514, 522 (3d Cir. 1997). While plaintiffs may use circumstantial evidence to establish the requisite intent, the fact of termination alone will not satisfy plaintiffs' burden. See id. at 522-23. The Third Circuit has stated, however, that plaintiffs could introduce "'evidence that the savings to the employer resulting from [the plaintiffs'] termination were of sufficient size that they may be realistically viewed as a motivating factor.'" Id. at 523 (quoting Turner v. Schering-Plough Corp., 901 F.2d 335, 347 (3d Cir. 1990)). This would be sufficient, assuming the other elements of the prima facie case have been established, to shift the burden of production to the defendant. Id. at 522.

---

[12] Section 510 of ERISA, 29 U.S.C. § 1140, provides in relevant part:

> It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan, this subchapter, section 1201 of this title, or the Welfare and Pension Plans Disclosure Act [29 U.S.C. § 301 et seq.], or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan, this subchapter, or the Welfare and Pension Plans Disclosure Act.

In addition to the fact of termination, plaintiffs have produced evidence that their terminations and the Alliance were anticipated to yield, and did yield, significant savings to the defendants. See Pl.'s Appendix B, Report of proposed expert witness Philip Santarelli ("Santarelli Rep.") (concluding that terminations of ADM employees had a "total positive financial impact" of $9, 336, 000); id., Exhibit 22, Minutes of CoreStates Board of Directors Meeting (referencing Larsen's contention that Andersen Alliance would "result in a significant cost savings" and summary of Perrotty's presentation outlining economic benefits of Alliance); Deposition of Salvatore Cutrona ("Cutrona Dep."), at 57-58 (stating that Andersen had estimated to CoreStates that the Alliance could result in a five-year average increase of earnings per share of $.08 per share). The court finds this evidence sufficient to demonstrate the requisite intent necessary to establish plaintiff's prima facie case.

Once plaintiffs have established the elements of the prima facie case, a rebuttable presumption that § 510 has been violated exists. See Dewitt, 106 F.3d at 522. The burden then shifts to CoreStates to show through admissible evidence that it had a legitimate purpose for entering into the Alliance and terminating plaintiffs. See Gavalik, 812 F.2d at 853. If CoreStates "carries its burden of production, the presumption drops from the case and the class representative is afforded the opportunity to demonstrate that [CoreStates'] articulated reason is pretextual 'either directly by persuading the court that a discriminatory reason more likely motivated [CoreStates] or indirectly by showing that [CoreStates'] proffered explanation is unworthy of credence.'" Id. (quoting Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 256 (1981)).

Defendants have articulated a legitimate purpose for terminating the employees and have

met their burden of production. See, e.g., Deposition of Sue Perrotty ("Perrotty Dep."), at 102-04, 258-59 (stating that decision to transfer employees to Andersen was about "utilization of resource" and money saved was spent elsewhere). Plaintiffs now have the opportunity to discredit defendants' explanation. Gavalik, 812 F.2d at 853. Plaintiffs again may rely on the testimony of their proposed expert witness Philip Santarelli regarding the "positive financial impact" of plaintiffs' terminations and the statements of CoreStates and Andersen management highlighting the economic gain anticipated as a result of the Alliance and termination in order to prove that defendants' proffered reason is pretextual. As plaintiffs have submitted sufficient evidence to carry their burden and raise a genuine issue of material fact as to defendants' intent, summary judgment is inappropriate. Therefore, defendants' motion on Count I has been denied.

C. Count II

Count II asserts a claim against CoreStates and all other fiduciaries and administrators for breach of fiduciary duties in violation of §§ 404, 405, and 502(a)(3) of ERISA, 29 U.S.C. §§ 1104, 1105, 1132(a)(3) and common law.[13]

---

[13] Section 404 provides, in relevant part:

> (a)(1) Subject to sections 1103(c) and (d), 1342, and 1344 of this title, a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and --
>
> > (A) . . . .
> >
> > (B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims . . . .

29 U.S.C. § 1104.

Section 405 provides, in relevant part:

> (a) In addition to any liability which he may have under any other provision of this part, a fiduciary with respect to a plan shall be liable for a breach of

The Third Circuit has recognized that a breach of fiduciary duty exists where plaintiffs can prove: (1) fiduciary status of a defendant; (2) who made material misrepresentations; (3) with the knowledge that the misrepresentations caused confusion; and (4) which resulted in harm to the employees. See In re Unisys Retiree Medical Benefit "ERISA" Litigation, 57 F.3d 1255, 1264-66 (3d Cir. 1995), cert. denied, 517 U.S. 1103 (1996). Defendants assert that plaintiffs have failed to present sufficient evidence of a material misrepresentation, knowledge by CoreStates, or a causal connection to any actual harm.

In spite of defendants' contentions, plaintiffs have presented sufficient evidence to defeat summary judgment. First, both parties agree that CoreStates' CEO and President announced to employees that "[p]eople whose jobs are affected will receive benefits according to the CoreStates severance policy. We will communicate in more detail about this subject when we

---

> fiduciary responsibility of another fiduciary with respect to the same plan in the following circumstances:
>
> > (1) if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach;
> > (2) if, by his failure to comply with section 1104(a)(1) of this title in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled such other fiduciary to commit a breach; or
> > (3) if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

29 U.S.C. § 1105.

Section 502(a)(3) provides:

> (a) A civil action may be brought --
>
> > (3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (I) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan[.]

29 U.S.C. § 1132(a)(3).

reach decision and take actions."[14] Appendix to Pls.' Mot. for Partial Summ. J. ("Pls.' Appendix"), Exhibit 1, March 13, 1997, Larsen and Greco Memorandum. Following this initial announcement, in response to employee questions regarding severance benefits, human resource personnel referred employees back to the on-line policy stating that it was up-to-date and correct. See Pls.' Appendix, Exhibit 56, March 28, 1997, e-mail transmission from Debra Ricci. Defendants contend that plaintiffs also received communications in which they were told that they would not receive severance pay. See Exhibits in Supp. of Defs.' Mot. for Summ. J. ("Defs.' Exhibits"), Vol. 1, Exhibits 3, 12. The first of these appears to have been sent on April 28, 1997, a month and a half after the initial announcement by Larsen and Greco. See id., Exhibit 3. During this period, employees requested the Summary Plan referred to in the on-line policy but did not receive copies until June or July of 1997. See Deposition of James Cloud

---

[14] The "severance policy" contained on-line included the following language:

Offers of severance will be made at CoreStates' discretion. Generally, severance will be offered to employees whose position is eliminated and to whom a comparable position is not offered. An employee who receives a comparable offer from CoreStates at any time prior to exiting CoreStates becomes ineligible for severance (regardless of whether or not the offer is accepted). Generally, CoreStates will NOT pay severance for voluntary terminations, terminations by mutual agreement, performance related terminations, termination due to cause or to employees whose current position is downgraded. . . .

Comparable Job Offer:

- Offer must be within 20 miles of current work location for non-exempt employees and within 40 miles for exempt employees below grade 49 (distance is not a criteria for comparability for employees in grade 49 and above).
- Offer must not involve a change in Part Time or Full Time status.
- Offer must be at a comparable salary level. . . .

* A copy of the CoreStates Severance Plan may be obtained upon request . . . . In case of discrepancies between this policy and the Severance Plan itself, the Plan document will govern. CoreStates retains the discretion to amend and interpret this policy and the Severance Plan, as permitted by this policy and the Plan. This policy does not constitute the Summary Plan Description which will be published separately.

("Cloud Dep."), at 48-49. At least one employee testified that he stayed at CoreStates and ultimately transferred to Andersen in reliance on the initial announcement and the information contained in the on-line severance policy. See id. at 34.

Given this evidence, a reasonable factfinder could determine that CoreStates made misrepresentations regarding the plaintiffs' entitlement to severance benefits. Moreover, plaintiffs have offered evidence from which one could determine that a substantial likelihood existed that employees would rely on the varied representations regarding eligibility for severance in deciding whether to remain at CoreStates or pursue other options. See Fischer v. Philadelphia Elec. Co., 994 F.2d 130, 135 (3d Cir.) (defining materiality and stating that it is "mixed question of law and fact"), cert. denied, 510 U.S. 1020 (1993). These facts and others cited by plaintiffs[15] also could support a finding that CoreStates knew that ADM employees were evaluating their options and would be hindered by misinformation. Furthermore, plaintiffs have presented the testimony of plaintiff James Cloud in which he claims to have relied on the misrepresentations to his detriment. See Cloud Dep. at 34 (stating that he stayed at CoreStates and gave up other potential employment opportunities to do so). Plaintiffs have raised genuine issues regarding material facts underlying this claim. Therefore, the court has denied defendants' motion for summary judgment on Count II. Because genuine issues of material fact also exist from the reverse viewpoint, the court also has denied plaintiffs cross-motion for summary judgment on this count.

---

[15] For example, defendants responded to inquiries about severance benefits. See, e.g., Pls.' Appendix, Exhibit 56. Additionally, defendants were aware that after the announcement of the Alliance, members of the ADM group were leaving to work elsewhere rather than remain at CoreStates. See Deposition of Linda Kramer, ("Kramer Dep.") at 276-78.

D. Count III

In Count III, plaintiffs state a claim on behalf of the entire employee class against the plans for failure to provide benefits in violation of § 502(a)(1)(B) of ERISA, 29 U.S.C. § 1132(a)(1)(B). See Amended Complaint ¶¶ 75-76. This section of ERISA provides that a plaintiff may bring a civil action "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." 29 U.S.C. § 1132(a)(1)(B). Plaintiffs allege that they were entitled to severance benefits upon termination and also that they were entitled to the same benefits provided to CoreStates employees during the period of the Andersen Alliance, because plaintiffs were also CoreStates employees. Amended Complaint ¶ 76.

Examining plaintiffs' severance benefits claim first, the court recognizes that "[t]he award of benefits under any ERISA plan is governed in the first instance by the language of the plan itself." Dewitt, 106 F.3d at 520. A threshold question in this case, therefore, is which plan governs the determination of severance eligibility? At issue are three potential sources of severance benefits: CoreStates' 1995 Severance Plan ("1995 Plan"); CoreStates 1996 Severance Plan ("1996 Plan), and CoreStates On-line Severance Policy ("Severance Policy"). Each contains different language concerning eligibility requirements for severance benefits.

Defendants claim that CoreStates amended its severance plan in September 1996 and that this plan (the 1996 Plan) controls the determination of plaintiffs' entitlement to severance benefits. Memorandum of Law in Supp. of Defs.' Mot. for Summ. J. ("Defs.' Mem."), at 32-33. Plaintiffs disagree, contending instead that the Board of Directors never approved the

amendments to the 1995 Plan. Plaintiffs' Mem. of Law in Supp. of Their Mot. for Partial Summ. J. ("Plaintiffs' Mem."), at 21. Therefore, plaintiffs assert, the 1996 Plan never came into effect. See id. Plaintiffs seem to contend that either the 1995 Plan or the Severance Policy should have served as the basis for any severance decision. See id. Although both parties insist that the language of either plan supports their desired outcome, at this juncture, the court is not convinced that an evaluation of CoreStates' decision not to provide severance benefits will yield the same result under both plans and the policy. The record and briefs are not complete enough for the court to resolve these issues.[16] Therefore, further exploration of the unresolved factual issues is necessary.

Plaintiffs' second claim in Count III states that they were entitled to pension and welfare benefits accrued by other CoreStates employees during the period of the Alliance. See Amended Complaint at ¶ 76. Plaintiffs contend (in a somewhat contradictory manner) that they were de facto employees of CoreStates after having been terminated by CoreStates and transferred to Andersen. No specifics for this contention are proffered.

Defendants argue that even if plaintiffs were CoreStates employees, the corporation "had unbridled discretion to define the plans' terms any way it saw fit, and to exclude certain categories of individuals from its plans." Defs.' Mem. at 35. While defendants may have had the right to exclude groups of employees from its plans, see Bronk v. Mountain States Tel. & Tel. Inc., 140 F.3d 1335, 1338 (10th Cir. 1998), defendants have not shown on the record how

---

[16] Some of these unresolved questions include: when, if ever, the 1996 Plan was amended and made effective; when notification of termination occurred and whether the notification date or termination date determines which document governs any benefits decisions; and does the Andersen Alliance constitute "outsourcing" as that term is used in the 1996 Plan.

plaintiffs fit into any category of employees so excluded from their plans. Defendants state that independent contractors are excluded from the Plans but do not analyze why the plaintiffs were independent contractors. As is discussed below in the court's analysis of Count IV, at least for purposes of the Pennsylvania statute, plaintiffs have raised a genuine issue of material fact regarding their employee status (employee versus independent contractor).

Because the record is replete with factual disputes that must be resolved prior to any review of CoreStates' determination of plaintiffs' eligibility for severance, welfare, and pension benefits, the court has denied both defendants' and plaintiffs' motions for summary judgment with regard to Count III.

E. Count IV

Count IV asserts a claim against CoreStates on behalf of employees who were hired into "nominally non-employee positions" under the Pennsylvania Wage Payment and Collection Law ("WPCL"), Pa. Stat. Ann, tit. 43, § 260.1 et seq. Plaintiffs assert that these employees were de facto employees of CoreStates during the time they were nominally employed by Anderson, and that CoreStates' wrongfully denied them benefits which were available to other CoreStates employees. See Amended Complaint, at ¶ 78. Count IV survived the defendants' motion to dismiss to the extent that plaintiffs seek recovery for non-ERISA benefits such as wages, bonuses and vacation pay. See Feret v. CoreStates Fin. Corp., No. 97-6759, 1998 WL 436560 at *8 (E.D. Pa. July 27, 1998).

Defendants now seek to dispose of the plaintiffs' WPCL claim on summary judgment by contending that plaintiffs have failed to produce evidence demonstrating that they remained

CoreStates employees after they were hired into "nominally non-employee positions." See Defs.' Mot. for Summ. J., at 37-38. Plaintiffs argue, however, that there is a material factual dispute concerning whether CoreStates or Anderson exercised control over the daily activities of the plaintiff class. See Plaintiffs' Resp. to Defs.' Mot. for Summ. J., at 31-31.

The WPCL does not itself create a right to compensation. Rather, it gives additional protections to employees by providing statutory remedies for an employer's breach of contractual obligations. See Sendi v. NCR Comten, Inc., 619 F. Supp. 1577, 1579 (E.D. Pa. 1985), aff'd, 800 F.2d 1138 (3d Cir. 1986). Section 260.3(a) of the WPCL provides: "Every employer shall pay all wages, other than fringe benefits and wage supplements, due to his employees on regular paydays designated in advance by the employer . . . ." 43 PA. STAT. ANN. § 260.3(a). Section 260.3(b) provides that "[e]very employer who . . . agrees to pay or provide fringe benefits or wage supplements, must remit the deductions or pay or provide the fringe benefits or wage supplements . . . within 10 days after such payments are required to be made directly to the employee . . . ." Id. § 260.3(b). The WPCL defines "wages" and "fringe benefits" broadly. "Wages" include "all earnings of an employee . . . [and] also . . . fringe benefits or wage supplements whether payable by the employer from his funds or from amounts withheld from the employees' pay by the employer." Id. § 260.2a. "Fringe benefits" include "all monetary employer payments to provide benefits under any employee benefit plan, as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974 . . . as well as separation, vacation, holiday or guaranteed pay . . . ." Id. The WPCL imposes liquidated damages and criminal liability for failure to make such payments, see id. §§ 260.10, 260.11a, and authorizes any employee to sue to recover owed wages and benefits. See id. § 260.9a.

The WPCL only applies to "wages or compensation . . . that have already been earned by [a] separated employee." Allende v. Winter Fruit Distrib., Inc., 709 F. Supp. 597, 599 (E.D. Pa. 1989). Though the WPCL does not define the term "employee," the statute and cases interpreting the statute instruct that it applies only to employees. See 43 PA. STAT. ANN. § 260.2a; Bunnion v. Consolidated Rail Corp., No. 97-4877, 1998 WL 32715, at *8-9 (E.D. Pa. Jan. 6, 1998) (finding that plaintiffs may be able to prove that independent contractors are "employees" under the WPCL). Black's Law Dictionary defines an "employee" as "a person in the service of another under any contract of hire . . . where the employer has the power or right to control and direct the employee in the material details of how the work is to be performed." Black's Law Dictionary 525 (6th ed. 1990). Plaintiffs' WPCL claim must be dismissed on summary judgment, therefore, if plaintiffs have not created a genuine issue of material fact concerning whether they were employees of CoreStates while they were nominally employed by Anderson.

Defendants point to the following evidence that employees transferred to Andersen were not employees of CoreStates after October 31, 1997: (1) plaintiffs' admission in paragraph 9 of Plaintiffs' Response to Defendants' Statement of Undisputed Facts in Support of Their Motion for Summary Judgment that "170 former CoreStates employees of the AD&M group became employees of Andersen on November 1, 1997"; (2) Feret's statement that Andersen had control over the "tools" he used as part of his daily work, see Deposition of Joseph Feret ("Feret Dep."), at 197-99; (3) that the employees were paid by Andersen, were reimbursed for expenses by Andersen, and received benefits from Andersen, see Leyderman Dep., at 191-92; Feret Dep,. at 194; and (4) Sue Perrotty's testimony that CoreStates had no control over how Andersen

approached or completed the projects assigned to it by CoreStates, see Perrotty Dep., at 237-38. Additionally, the record reveals that during the negotiation of the Alliance, Andersen's control over its employees was not an issue open for debate. See Perrotty Dep., at 146-47. Finally, James Cloud testified that he did not believe that he was a CoreStates employee on November 1, 1997. See Cloud Dep., at 101.

In response, plaintiffs have offered few specific citations to evidence supporting a finding that plaintiffs were actually CoreStates employees. Nonetheless, the record reveals some dispute over plaintiffs' employment status. The plaintiffs apparently reported to both CoreStates and Andersen employees prior to the formal Alliance and during the course of their tenure at Andersen. See Perrotty Dep., at 241; Feret Dep., at 192-94. Additionally, while plaintiffs stated in a document submitted to the court that they became Andersen employees on November 1, 1997, in paragraph 79 of that same document, they denied that Andersen actually controlled their daily activities.

Although plaintiffs' evidence is obviously weak, there appear to be some genuine issues as to the employment status of the plaintiffs transferred to Andersen, therefore, the court has denied summary judgment on Count IV.

F. Count V

In Count V, plaintiffs assert that defendants breached their contract with the former employees who were hired into "nominally non-employee positions" by "wrongfully denying those employees . . . the benefits available to other employees of CoreStates." Amended Complaint, at ¶ 80. Even if this court accepts plaintiffs' contention that those people in

"nominally non-employee positions" remained CoreStates employees, plaintiffs must nonetheless demonstrate that CoreStates had a contract with its employees that required it to treat its employees equally.

Defendants contend that this count should be dismissed because plaintiffs are at-will employees and at-will employees may not maintain suits for breach of an employment contract against their employers stemming from their termination. See Defendants' Motion for Summ. J., at 38-39. Plaintiffs counter that defendants have misunderstood Count V; they assert that defendants breached their contract when they were treated differently, not when they were terminated. See Pls.' Resp., at 31.

The cases cited by defendants clearly demonstrate that an employer is not liable under a breach of contract theory for terminating an at-will employee. See Mercante v. Preston Trucking Co., No. 96-5904, 1997 WL 288614, at *3 (E.D. Pa. May 21, 1997); Marmer v. Saloom Furniture Co., No. 94-6869, 1995 WL 548858, at *2 (E.D. Pa. Sept. 12, 1995); Engstrom v. John Nuveen & Co., 668 F. Supp. 953, 959 (E.D. Pa. 1987). Plaintiffs have not asserted, however, a breach of contract claim based on their termination. Rather, they have alleged that there is either an express oral contract[17] or an implied contract between CoreStates and its employees and that CoreStates breached one of the contract's terms which requires CoreStates to treat all of its employees equally. See Pls.' Resp., at 31. As such, the cases cited by defendants do not dispose

[17] As plaintiffs have produced no evidence suggesting that there was ever a written employment contract between CoreStates and its employees, the court assumes that plaintiffs intended to allege an oral contract between CoreStates and its employees. Moreover, even if plaintiffs had intended to base their claims on the existence of a written contract, they have failed to produce sufficient evidence to preclude summary judgment on this claim because they have failed to produce a scintilla of evidence even suggesting that such a contract existed.

of Count V.

Nevertheless, Count V cannot survive summary judgment. If plaintiffs' claim is based on a term contained in an implied employment contract, it fails as a matter of law. "[U]nder Pennsylvania law, there is no cause of action for breach of an implied employment contract, because every employment relationship is a contractual relationship. . . . Although contract terms can be implied, the employment contract itself cannot; either the employee works at-will or has an express employment contract . . . ." Engstrom, 668 F. Supp. at 957; Darlington v. General Electric, 504 A.2d 306, 309 (Pa. Super. Ct. 1986), overruled on other grounds, Krasja v. Keypunch, Inc., 622 A.2d 355, 360 (Pa. Super. Ct. 1993).

To the extent that plaintiffs' claims are based on the existence of an express oral employment contract, they must also fail as a matter of law because plaintiffs have presented no evidence that an oral employment contract with an equal treatment term exists. Under Pennsylvania law, plaintiffs must present "'clear and precise' evidence" of an oral contract by which both parties "manifested an intent to be bound," for which both parties gave consideration, and which contains "sufficiently definite" terms. Martin v. Safeguard Scientifics, Inc., 17 F. Supp. 2d 357, 368 (E.D. Pa. 1998) (quoting Browne v. Maxfield, 663 F. Supp. 1193, 1197 (E.D. Pa. 1987), and Gorwara v. AEL Indus., Inc., 784 F. Supp. 239, 242 (E.D. Pa. 1992)). As plaintiffs have presented no evidence of an oral contract, much less "clear and precise evidence," they have not presented a genuine issue of material fact which precludes summary judgment on their breach of contract claim. Summary judgment, has therefore, been granted on Count V.

G. Counts VII - X

Defendants finally argue that these counts should be dismissed as moot because the sole plaintiff pursuing Counts VII - X, Feret, has been made whole and is therefore, no longer entitled to seek damages for these alleged violations. Plaintiffs do not contest that defendants' decision to rehire Feret and restore his stock options has made Feret whole with respect to these claims. They do contend, however, that the fact that Feret has been made whole simply establishes the defendants' liability under these claims and therefore, entitles them to summary judgment on the liability aspects of these claims. Neither party offers case authority to support their arguments.

Although defendants are correct that when a plaintiff who is seeking only damages is made whole by their actions, the plaintiff's claims may be mooted, defendants ignore Feret's requests for attorney's fees, see Amended Complaint, ¶ J, and punitive damages, see Amended Complaint, ¶ I, under these counts of the complaint, if they are appropriate. See Murphy v. FDIC, 61 F.3d 34, 40 (D.C. Cir. 1995) (FDIC's decision to initiate an ADR program mooted plaintiff's claim for injunction requiring FDIC to adopt an ADR program); N.A.A.C.P. v. Detroit Police Officers Ass'n, 900 F.2d 903, 906 (6th Cir. 1990), cert. denied, 499 U.S. 913 (1991) (recall of laid-off plaintiffs did not moot all claims that lay-offs were discriminatory); 13A Charles Alan Wright, et al., Federal Practice and Procedure § 3533.2, at 238-40 (2d ed. 1984) ("Action by the defendant that simply accords all the relief demanded by the plaintiff may have the same effect as settlement. So long as nothing further would be ordered by the court, there is no point in proceeding to decide the merits. Individual issues may be mooted in this way, even though other matters remain to be resolved."). Counts VII through X are moot only if the court may not provide further relief in the form of either attorney's fees or punitive damages on these claims. See Koppel v. Wien, 743 F.2d 129, 135 (2d Cir. 1984) (refusing to moot case where

plaintiff may prevail on claim for legal fees). Therefore, the availability of attorney's fees and punitive damages under each of these counts will be discussed separately.

1. Count VII - Fraud Under the Federal Securities Laws

Feret claims that defendants issued materially false and misleading statements concerning his entitlement to stock options in violation of § 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and Securities Exchange Commission Rule 10b-5, 17 C.F.R. § 240.10b-5. This claim is moot because Feret is not entitled to attorney's fees or punitive damages even if he were able to prove a violation of § 10(b).

Punitive damages are not available for private civil actions alleging fraud in violation of the federal securities laws, including § 10(b). See Manufacturers Hanover Trust Co. v. Drysdale Sec. Corp., 801 F.2d 13, 29 (2d Cir. 1986), cert. denied, 479 U.S. 1066 (1987); Gould v. American-Hawaiian Steamship Co., 535 F.2d 761, 781 (3d Cir. 1976); Alna Capital Assoc. v. Wagner, 532 F. Supp. 591, 597 (S.D. Fla. 1982), aff'd, 758 F.2d 562 (11th Cir. 1985).

Attorney's fees are only available for violations of § 10(b) under a limited number of circumstances, none of which are present here. See Straub v. Vaisman & Co., 540 F.2d 591, 599 (3d Cir. 1976) ("in suits under § 10(b) the power to award attorney's fees is 'sharply circumscribed'"). As Feret has not alleged that defendants engaged in bad faith conduct during the course of the litigation, and any allegations of defendants' bad faith flow from the same conduct giving rise to his claims, he is not entitled to attorney's fees. See id. at 599-600 ("counsel fee awards based on the 'act complained of' are punitive damages for the violation of the statute" which are "precluded by the Act").

2. Count VIII - Fraud Under the Pennsylvania Securities Act

Feret claims that defendants's misrepresentations concerning his entitlement to stock options also violated the § 1-401 of the Pennsylvania Securities Act, which provides a private cause of action in § 1-501. See 70 Pa. Stat. Ann. tit. 70, §§ 1-401, 1-501 (West 1994). This count of the complaint is also moot because neither attorney's fees nor punitive damages are included in the description of remedies available for violations of the Pennsylvania Securities Act. See 70 Pa. Stat. Ann. § 1-506 (West 1994) (limiting liability to that "explicitly provided in this act"); In re Action Indus. Tender Offer, 572 F. Supp. 846, 853 (E.D. Va. 1983) (disallowing punitive damages under Pennsylvania Securities Act because Act specifies that remedy is limited to actual damages and Act's provisions are interpreted in accordance with federal securities laws); see also Degen v. Bunce, No. 93-5674, 1995 WL 120483, at *8 (E.D. Pa. March 13, 1995) (suggesting that Pennsylvania Securities Act does not permit award of attorney's fees).

3. Count IX - Common Law Fraud and Count X - Negligent Misrepresentation

Feret alleges that the same false or misleading statements constitute fraud and negligent misrepresentation. Attorney's fees are not available for common law fraud or negligent misrepresentation claims in the absence of an agreement between the parties. See Pittsburgh Live, Inc. v. Servov, 615 A.2d 438, 441-42 (Pa. Super. Ct. 1992) (reversing award of counsel fees in fraud action because there was no fee agreement between the parties and "there is no established exception which permits recovery of attorney fees in an action for fraud"); Shanks v. Alderson, 582 A.2d 883, 885 (Pa. Super. Ct. 1990), appeal denied, 598 A.2d 994 (Pa. 1991)

Punitive damages are available under Pennsylvania law only when the defendant's conduct is "outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others." Logue v. Logano Trucking Co., 921 F. Supp. 1425, 1427 (E.D. Pa. 1996). Moreover, because the defendant's conduct must be "intentional, willful, wanton or reckless" to justify an award of punitive damages, "[n]either mere negligence, nor even gross negligence, shows sufficient culpability." Castetter v. Mr. "B" Storage, 699 A.2d 1268, 1271-72 (Pa. Super. Ct. 1997). Thus, Count X does not support a claim for punitive damages because it alleges only that defendants acted negligently. As there is no further relief available under Count X, it is moot.

Though a fraud claim may support an award of punitive damages, the allegations of Count IX and the evidence of record do not permit such an award, for "[f]raud, alone, is not sufficient to justify an award of punitive damages." Hughes v. Consol-Pennsylvania Coal Co., 945 F.2d 594, 616 (3d Cir. 1991), cert. denied, 504 U.S. 955 (1992). "[W]hen fraud is the basis of compensatory damages, the same fraudulent conduct is not sufficient to base an award of punitive damages without more. To justify the award of punitive damages, there must be acts of malice, vindictiveness and a wholly wanton disregard for the rights of others." Pittsburgh Live, 615 A.2d at 442. No such evidence has been proffered by plaintiffs. For this reason, Count IX has been dismissed.

In conclusion, the court has granted defendants' motion for summary judgment as to all plaintiffs in Subclass A who have signed the release waiving their claims against defendants. Defendants' motion also has been granted with regard to Counts V, VII, VIII, IX, and X. The court has denied defendants' motion with regard to Counts I, II, III, and IV, and plaintiffs' cross-

motion for partial summary judgment on Counts II and III.

An appropriate order has been issued.

_____
William H. Yohn, Jr., J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSEPH P. FERET, JAMES CLOUD, IRINA LEYDERMAN, on Behalf of Themselves and All Similarly Situated Persons, Plaintiffs,	:	CIVIL ACTION
v.	:	
FIRST UNION CORP., as successor-in-interest to CORESTATES FINANCIAL CORP., CORESTATES FINANCIAL CORP., Its Employee Pension and Welfare Benefit Plans, and the Fiduciaries and Administrators of Each, Defendants.	:	No. 97-6759

ORDER

AND NOW, this day of January, 1999, upon consideration of defendants' motion for summary judgment and plaintiffs' response thereto, and plaintiffs' motion for partial summary judgment and defendants' response thereto, IT IS HEREBY ORDERED that:

1. defendants' motion for summary judgment is granted as to plaintiffs in Subclass A on all counts and judgment is entered in favor of defendants against the plaintiffs in Subclass A consisting of all individuals who have signed waivers releasing their claims against CoreStates;
2. defendants' motion for summary judgment is GRANTED as to plaintiffs in Subclass B on counts V, VII, VIII, IX, and X;
3. defendants' motion for summary judgment is DENIED as to plaintiffs in Subclass B on Counts I, II, III, and IV;
4. plaintiffs' motion for summary judgment on counts II and III is DENIED.

A memorandum will follow.

_____
William H. Yohn, Jr., J.